HIGHLIGHTS OF 2001 TAX LEGISLATION

Personal income tax
For the 2001 and 2002 tax years, the Vermont personal income tax will be based on the Federal income tax rates that were in effect immediately prior to enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001. Instead of multiplying Federal tax liability by 24%, taxpayers will use a look-up table. Act 67.

Withholding
For many Vermonters, Federal withholding will decreased on July 1, 2001 as a result of Federal tax changes. The Vermont withholding was unaffected by the change because of Act 67 (see above) that froze the Vermont income tax at 24% of the Federal rates before the Federal changes. Vermont employers using Vermont rate charts will not have to make any adjustments. Vermont employers who now compute Vermont withholding by multiplying Federal withholding by 24% will need to use old Federal tables or start using the Vermont charts. Technical Bulletin 23 discusses withholding issues. It is available on the Department's website, www.state.vt.us/tax.

Sales and use tax
Effective July 1, 2001 most footwear became exempt from sales tax. The exemption was passed in 1999 with the clothing exemption, but with a delayed effective date. As with clothing, the exemption applies only to footwear that costs (per pair) $110 or less and does not apply to special footwear designed primarily for athletic or protective use and not normally worn except when so used. Footwear will still be subject to the one percent local option tax imposed by the Town of Manchester. 1999, No. 49, § 34a. Technical Bulletin 17 discusses the exemption for clothing and footwear. It is available on the Department's website, www.state.vt.us/tax.

The sales tax exemption for devices providing mobility to handicapped persons has been expanded effective July 1, 2001. The exemption applies to motorized carts and other devices used primarily to afford mobility to persons with physical disabilities. Eligible purchasers may obtain exemption certificates from the Department. The requirement that stairlifts be purchased pursuant to a physician's prescription in order to be exempt is eliminated. Act 53.

School property tax
Machinery and equipment used directly in the processing of whey, whether or not such machinery or equipment is attached or affixed to real property, will not be listed on the education property tax grand list for April 1, 2001 and after and therefore shall be exempt from education property tax. Act 53.

Homestead property tax income sensitivity

Beginning in 2003 the reconciliation of school property tax adjustments (prebates) is eliminated. Development of a uniform parcel identification numbering system will allow the Department to base the adjustment payments on the statewide and local property taxes on the homestead for the fiscal year beginning in the calendar year in which the claim is filed. Act 63, § 163d, § 283(c).

Payments will be made by the latest of: August 1, for claims filed by April 15; 45 days after the claim is filed, for claims filed after April 15; or 30 days prior to the first education property tax installment due for the claimant's municipality in the fiscal year which begins in the calendar year in which the claim is filed under section 6068 of Title 32; or 25 days after the Town's grand list had been transmitted in accordance with section 5404(b) of Title 32. Act 63, § 163d.

HIGHLIGHTS OF 2002 TAX LEGISLATION

Individual income tax

The calculation of Vermont income tax based Federal taxable income is now permanent. Federal taxable income is increased by nonVermont state and municipal bond income and dividends or other distributions to the extent they are attributable to nonVermont state or local obligations; and decreased by income from Federal obligations and by forty percent of net long term capital gain income to arrive at Vermont taxable income. Vermont taxable income is subject to Vermont tax rates from 3.6 percent to 9.5 percent. However, the marginal rates for the middle three income brackets have changed.[1] The pass-through of Federal credits for retirement income, investment tax, child care and dependent care and, for 2 years, alternative minimum tax credit is continued. The pass-through of the Federal tax on early withdrawals from pensions and IRAs is continued. The pass-through of the recapture of investment tax credit and lump-sum pension averaging is continued. The farm income averaging tax is no longer passed through, but a farm income averaging credit is available on the Vermont return. The pass-through of alternative minimum tax and tax on investment income of children under 14 is eliminated. These changes are effective for taxable years beginning on or after January 1, 2002. H. 753.

Effective January 1, 2002, the penalty for underpayment of quarterly estimated taxes is reduced from two percent to one percent per month. The threshold for estimated tax liability is increased from $250 to $500 for tax years 2003 and after. The penalty for failure to pay income tax is reduced from 5 percent to 2 percent for taxable years beginning on or after January 1, 2002 (and further reduced to 1 percent for taxable years beginning on or after January 1, 2005). H. 753.

Income tax exemption for National Guard pay is expanded to include U.S. Reserve pay and the exempt amount is increased from the first $1500 to the first $2000. The income eligibility for this exclusion is increased from adjusted gross income of less than $47,000 to adjusted gross income of less than $50,000. Effective for taxable years beginning on or after January 1, 2003. H. 771.

A new child care or dependent care credit is available to filers with adjusted gross income below $30,000 for a single taxpayer and below $40,000 for married taxpayers. The credit is 50% of the Federal credit amount and is available in lieu of the existing credit (24% of the Federal credit amount) that can be claimed on the Vermont return. Effective for taxable years beginning on or after January 1, 2003. H. 771.

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[1] The effect of the changes for most taxpayers is minimal, but for those who want to change their withholding, see the Department's website for New Withholding Tables.

Business income taxes

The use of the Federal 30 percent bonus depreciation is disallowed on the Vermont corporate income tax return for C corporations and thus a separate depreciation schedule for Vermont is required. Effective for taxable years beginning on or after January 1, 2001. H. 753.

The penalty for failure to pay income tax is reduced from 5 percent to 2 percent for taxable years beginning on or after January 1, 2002 (and further reduced to 1 percent for taxable years beginning on or after January 1, 2005). H. 753.

A business whose only contact with Vermont is ownership of data or software being used in Vermont, or ownership of computers servers in the state or receipt of computer processing or web hosting services from a Vermont provider will not be considered a Vermont business for tax purposes. This makes explicit current practice of the Department. Effective for taxable years beginning on or after January 1, 2002. H. 771.

The definition of "charitable threshold rate" applicable to tax credits for charitable investments in housing is updated. Prior law pegged the rate to two points below the one-year U.S. Treasury note. The U.S. Treasury no longer issues one-year notes. Now the rate is pegged to two points below the bank prime loan rate. This credit is available against individual income tax, corporate income tax, bank franchise tax and insurance premiums tax. The amendment takes effect upon passage (not yet signed) and shall apply to loans made after that date. H.771.

The law that made an export tax credit available to C corporations has been expanded to any type of business entity. Effective upon passage (not yet signed). H. 239.

The financial services tax credit that was due to sunset is extended through tax years beginning prior to January 1, 2007. H. 239.

The investment credit is expanded to allow the credit to be claimed on capital leases as well as purchases. Effective upon passage and applicable to leases entered into after that date (not yet signed). H. 239.

High-tech businesses (defined as those involved in Vermont in design, development and manufacture of computer hardware and software; electronic devises; energy technology; or electric vehicles) may be entitled to a new range of tax incentives. Most of the incentives mirror existing VEPC-granted incentives, but high-tech businesses may obtain approval for more of these credits than granted to any one company under current law. Effective for taxable years beginning on or after January 1, 2002. H. 239. (Also see high tech exemption under "Sales Tax" below.)

The existing 5 percent credit for substantial rehabilitation of historic buildings is expanded to qualified projects in a "village center" and the credit for qualified rehabilitation projects in a downtown development district is increased to 10 percent. The requirement that the credit be applied for prior to commencement of work has been eliminated. The amount authorized to be awarded in historic credits is increased from $300,000 to $750,000, but the $750,000 ($1,000,000 effective July 1, 2003) must include the total awarded for certain other new credits and the amount of reallocated sales tax. No more than forty percent of the total may be awarded in one community. This credit is available against income tax, bank franchise tax and insurance premiums tax. Effective May 28, 2002. H. 208.

A new credit is available against income tax, bank franchise tax or insurance premiums tax in the amount of 50 percent of expenditures up to a maximum of $25,000 spent to install or improve platform lifts, elevators or sprinkler systems in an existing building within a downtown district in order to comply with certain safety and admissibility rules. The credit may be carried forward for 14 years. It is subject to the $750,000 limit on total credits and reallocated sales tax. Effective May 28, 2002. H.208.

Estate tax
Current law imposes a Vermont estate tax equal to the amount of state death tax credit allowed by Federal estate tax law. Under Federal law, the Federal credit amount is being phased out to zero over four years, beginning in 2002. To prevent the decreases from passing through to the Vermont estate tax, the Vermont law was amended to make the Vermont tax equal to the amount of the credit which was allowed under Federal law in effect on January 1, 2001. When the Federal credit reaches zero, a Federal deduction for state estate tax is created. However, the Vermont estate tax will continue to be imposed in the amount of the 2001 Federal credit without any deduction. Current Federal law exempts estates of $1,000,000 or less from Federal estate tax. The exclusion amount increases until the Federal estate tax is repealed in 2010. Vermont passes through the exclusion and will continue to do so as it increases. This legislation also maintains the current Vermont tax rates on generation-skipping transfers. Effective as to estates of decedents with a date of death on or after January 1, 2002. H. 753.

The Vermont estate tax on the portion of a farmer's estate which is the farm business is eliminated. Effective upon passage (not yet signed). H. 753.

Sales and use tax
The Tax Commissioner is authorized to participate in the Streamlined Sales and Use Tax Agreement - a multistate agreement on how states will uniformly streamline and simplify their sales and use tax laws. Once the agreement is created, state legislatures will have the option of amending their laws to adopt the uniform provisions. Effective upon passage (not yet signed). H. 771.

Effective January 1, 2003, steel-toed and Kevlar-toed work shoes are exempt from sales tax regardless of price. H. 771.

Building materials and supplies that are purchased out-of-state and used in a job in a state that has no sales or use tax, but are stored for up to 180 days in Vermont are exempt from Vermont use tax. Effective with respect to material and supplies not stored in Vermont before July 1, 2004. H. 771.

The Mobile Telecommunications Act is adopted. This Act provides a uniform, national method for taxing mobile telecommunications based on the customer's place of primary use. Effective with respect to bills issued after August 1, 2002. H. 771.

The law with respect to trade-ins is clarified, providing that "receipt" excludes the amount allowed for trade-in of like kind property and that a credit is given after the sale when an old part is returned (so-called "core charges"). Effective upon passage (not yet signed). H.771.

High tech businesses that have received VEPC approval may qualify for an exemption for personal computers and included software packages purchased for use exclusively in the Vermont business and directly in the high tech activity. Effective with respect to purchases on or after July 1, 2002. H.239.

Effective July 1, 2002, fertilizers and pesticides are exempt from sales tax *only* if purchased for use directly in the production for sale of tangible personal property on farms. Formerly the exemption was available to anyone purchasing pesticides and fertilizers for any purpose. H. 753.

Effective July 1, 2002, the exemption for property to be incorporated into a net metering system is expanded to include property incorporated into (1) an off-the-grid energy system that meets all other requirements of the net metering system and (2) a hot water system that converts solar energy into thermal energy used to heat water (the property must be directly necessary for and used to capture, convert, or store solar energy for this purpose). Effective July 1, 2002. S.138.

Cigarette tax
The cigarette tax is increased by 49 cents per pack on July 1, 2002 (to 93 cents per pack). It increases another 26 cents per pack on July 1, 2003 (to $1.19 per pack). H. 753.

A floor stock tax is imposed on wholesale and retail dealers of cigarettes who, on July 1, 2002, possess more than 10,000 cigarettes for retail sale. The tax is 49 cents per pack (of twenty cigarettes) or stamp in the wholesaler's or retailer's possession on July 1, 2002. Payment is due September 25, 2002. A floor stock tax will be imposed on wholesale and retail dealers of cigarettes who, on July 1, 2003, possess more than 10,000 cigarettes for retail sale. The tax is 26 cents per pack or stamp in the wholesaler's or retailer's possession on July 1, 2003. Payment is due September 25, 2003. H. 753.

Local option taxes
Authority of qualifying municipalities[2] to impose local option taxes (sales, meals and alcohol, and rooms) was due to expire at the end of 2004. It has been extended through 2006. H. 771.

Education property tax
Property tax adjustment payments are no longer subject to reconciliation. Eligible homeowners will file claims (Form HS -138) and receive adjustments based on their prior year household income and prior year property value and their school district's current budget. To receive an adjustment, a claimant must own the homestead on April 1 of the year for which the claim is made. Property tax adjustment claims and homeowner and renter rebate claims may be filed until December 1. As in the past, eligibility for a homeowner rebate is based on owning the homestead on December 31. Effective January 1, 2003 and applicable to claims filed in 2003 and after. H.771; H. 766.

Effective fiscal year 2005 (2004 grand list), ski lifts and snow-making equipment will be exempt from education property tax. H. 771.

For purposes of determining household income for a property tax adjustment, pension and annuity distributions will continue to be included in household income but only to the extent that they are included in adjusted gross income in the year of distribution. Amounts contributed to a pension, annuity or Roth IRA that were included in adjusted gross income in the year of contribution are not included in household income in the year of distribution. Effective for claims filed in 2003 and after with respect to 2002 household income. H. 771.

A claimant who filed a timely claim may file amended property tax adjustment claim within three years after the date for filing the claim to correct household income. Effective upon passage (not yet signed). H. 771.

Property tax adjustment payments will be subject to debt claims of other state agencies under the Setoff Debt Collection Program. Effective upon passage (not yet signed). H.771.

A school district may finance capital school construction projects voted after July 1, 2002 and begun in fiscal years 2003, 2004 or 2005 by raising taxes on its own grand list in lieu of receiving State school construction aid. A Vermont participant in an interstate school district, however, will receive State school construction aid

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[2] Williston's local option tax goes into effect on July 1, 2002. See Technical Bulletin-14 on the Department's website (www.state.vt.us/tax) for guidance on local option taxes.

in addition to being permitted to raise taxes for school construction outside of the sharing provisions of Act 60. There are two interstate school districts, Dresden (which includes Norwich, Vermont and Hanover, New Hampshire) and Rivendell (which includes Fairlee, West Fairlee and Vershire, Vermont and Orford, New Hampshire). The benefit applies retroactively to towns that voted a capital school construction project after April 1999 and began construction before July 1, 2002. The tax rate of a member of a union district that does not vote to finance construction on its own grand list will not be higher than it otherwise would be due to another member town's vote. However, members that finance school construction outside of the sharing pool will have a lower tax rate for the construction than the other members of the same district. Effective upon passage (not yet signed). H. 771.

Property transfer tax
Property transfer tax returns will include a certification indicating whether the transfer is in compliance with or is exempt from regulations governing potable water supplies and wastewater systems under chapter 64 of Title 10; and that the seller has advised the purchaser that potable water supply and wastewater system requirements pertaining to the property may significantly limit the use of the property[3]. This replaces the certification requirement relative to the subdivision of lands under section 1218 of Title 18. Effective upon passage (not yet signed). S.27.

The first $100,000 of value of a principal residence purchased with financing from the Vermont Housing Finance Agency is exempt from property transfer tax. This exemption, due to expire on July 1, 2002, will continue in effect until July 1, 2006. H. 767.

Current use
The land use change tax is reduced from 20 percent to 10 percent for parcels that have been enrolled in the use value appraisal program for more than 10 years. Effective upon passage (not yet signed). H. 753.

Conformance reports formerly were required to be filed annually. Now they are required only when management activity has occurred. The report is due on or before February 1 of the year following the year in which the management activity occurred. Effective upon passage (not yet signed). H. 753.

Miscellaneous changes
The per transaction fee that the Internal Revenue Service charges for participation in the Federal debt offset program may be charged against the tax account. Effective upon passage (not yet signed). H. 771.

[3] This certification will be part of the property transfer tax return in its next iteration. Until the new return is available, filers should complete the subdivision certification section of the return as provided in temporary instructions available from the Department (call 828-2777).

A tax refund owed to an offender who is under a restitution order will be offset to the Department of Corrections for payment to the victim under the Setoff Debt Collection Program. Effective July 1, 2002. S. 222.

The Department may provide tax return information to the Department of Corrections or the Center for Crime Victims for the purpose of verifying a defendant's assets and income in setting a restitution amount. Effective July 1, 2002. S.222.

TAX LITIGATION

Supreme Court Decisions

Town of Victory v. State of Vermont, et al., Vermont Supreme Court Docket No. 2000-410 (October 2, 2002) (Entry order)
Town challenged valuation of ANR owned lands for the purposes of PILOT payments. Challenge to 1989 - 1998 valuations rejected on the grounds that appeals were not filed within 21 days required by statute. Town also challenged enrollment of State ANR lands in current use program and claimed they should be removed from program because of State's noncompliance with statutory requirements of filing conformance reports, periodic inspections and audits, and formal reapplication when additional land enrolled. The Court affirmed dismissal of claims to 1989 - 1998 valuations because they were never appealed within the 21-day period permitted by 32 V.S.A. § 3708(d). With regard to ANR lands enrolled in current use program, the Court reversed and remanded trial court's decision converting State's motion to dismiss into a motion for summary judgment and not allowing the Town opportunity for discovery of facts essential to proving its case after the motion to dismiss was filed.

State of Vermont v. Cindy L. Schofner and Peter C. Tripp, Vermont Supreme Court, Docket No. 1999-541 (May 2, 2002) (Entry order).
Listers visited home, observed marijuana plants and paraphernalia, this information was used to support a search warrant. The Court held that observational activities of listers are not searches for the purposes of the Fourth Amendment; therefore trial court erred in suppressing evidence of marijuana cultivation and possession.

In re: Picket Fence Preview, Vermont Supreme Court Docket No. 2001-037 (March 22, 2002).
Supreme Court affirmed imposition of use tax on printing a monthly, free real estate magazine. Magazine did not fit the definition of newspaper and did not qualify for newspaper exemption. Tax does not violate 1st or 14th Amendments to US Constitution.

Brueckner v. Town of Moretown, Town of Waterbury, Department of Taxes, Vermont Supreme Court Docket No. 2001-387 (February 8, 2002) (3 Justice Entry Order).
The Court rejected taxpayer challenge to property valuation and taxation systems of towns. Taxpayer claimed that use of fair market appraisal value instead of an arm's length sale value violated Vermont proportional contribution clause and United States equal protection clause. The Court upheld dismissal of the Moretown appeal on res judicata grounds (appraisal fixed following appeal to

State Appraiser or the Court is fixed for next two years). The Court further upheld dismissal of the Waterbury appeal, holding that assessments need not be based on sales price, that different methods may be used, so long as comparable properties are assessed at the same equalization ratio.

<u>Thomas C. Murphy et. al., v. State of Vermont Department of Taxes</u>, Vermont Supreme Court Docket No. 2000-524 (December 26, 2001) (Entry order). Taxpayers were assessed land gains tax due to their failure to complete and occupy their principal residence within two years of purchase of the land, 32 V.S.A. § 10002(b). Taxpayers appealed to commissioner claiming seller/developer of land was cause of Taxpayers' delay in completion. Commissioner upheld assessment. Superior Court initially reversed, holding Department estopped from assessing tax because Taxpayers relied on Department to their detriment -- Taxpayers claimed they gave up opportunity to sue seller/developer for land gains tax. Superior court later vacated initial decision on a Rule 60(b) motion when it was discovered that Taxpayers had in fact sued seller/developer for the tax and had received verdict including the tax in their favor. Supreme Court affirmed.

<u>Saldi v. Merchant v. Department of Taxes</u>, Vermont Supreme Court Docket No. 2001-081 (December 26, 2001) (Entry order).
Supreme Court upheld trial court finding that current use tax lien filed by the Department was invalid due to inadequate notice to Taxpayers and improper recording of the lien.

<u>Town of Bridgewater, et al. v. Vermont Department of Taxes</u>, No. 2001-031 (Vt. Supreme Court 11/8/01)(Entry Order).
Plaintiff towns and individuals filed declaratory judgment action challenging State's determinations of equalized education property tax grand lists under Act 60, claiming methods used by State resulted in unconstitutional disproportionate taxation. Supreme Court affirmed grant of State's motion to dismiss because plaintiffs failed to exhaust administrative remedies.

<u>Town of Killington v. State of Vermont, Edward D. Haase, Commissioner of Taxes and Marc Hull, Commissioner of Education</u>, No. 99-286 (Vt. Supreme Court 4/20/01).
Court rejected challenge to transitional provisions of Act 60 which capped anticipated rapid rise in property taxes in “sending” towns. Killington claimed approximately $500,000 additional tax savings because its "municipal budget" required the State to calculate its municipal expenditure growth in terms of the increase in gross expenditure rather than the increase in expenditure funded by taxes. Court held that State's interpretation of the term was reasonable and

gives effect to the purpose and policy of Act 60 to assure that a town's tax rate does not increase by more than forty percent as a result of the Act, but to limit the municipal growth that can be applied in calculating that increase.

Schievella v. Department of Taxes, No. 1999-385 (Vermont Supreme Court, Entry Order, 10/23/00). Supreme Court affirmed Washington Superior Court's 12(b)(6) dismissal by Judge Jenkins for lack of standing of complaint challenging constitutionality of income definition and eligibility requirements of Homestead Property Tax Income Sensitivity Adjustment, 32 V.S.A. § 6061 et. seq. The act adopted a statewide property tax for funding local education and adopted a "circuit breaker" that limits the statewide tax on homestead property to 2% of income for taxpayers with household incomes under $75,000. Taxpayers challenged how income is calculated for 2% limit and further challenged the $75,000 income limit on eligibility. Supreme Court upheld the legislative classifications as meeting rationality tests of equal protection and proportional contribution clauses of U.S. and Vermont Constitutions.

Hoffer v. Ancel, Civil No. 1:01CV93 (D. Vt. 6/27/01), affirmed, No. 01-7880 (2d Cir., 3/14/02). Taxpayer sued Tax Commissioner and Department attorney under 42 U.S.C. § 1983 for violation of civil rights seeking damages claiming 1) bills sent to him for recovery of back taxes contained inadequate notice of taxes due and his right to appeal and 2) the bills, which he continued to receive after he filed an administrative appeal, were of a harassing nature. Taxpayer also sought 1) a declaratory judgment that 32 V.S.A. § 6062(c), which limits claims for Act 60 property tax relief to the proportion of a claimant's ownership of the subject property, violated the United States Constitution and 2) an injunction preventing Defendants from enforcing the statute. The District Court dismissed the complaint on the principle of comity (Federal courts will not interfere in state tax matters as long as state provides an adequate remedy). The Second Circuit Court of Appeals affirmed.

Superior Court Decisions

Coughlin v. Department of Taxes, Rutland Superior Court Docket No. S0640-00 RcCa (7/3/01).
Affirmed commissioner's denial of personal income tax refunds. Taxpayer had paid estimated personal income tax assessments. He later filed returns showing lower liability and requested refunds. Refunds were denied and taxpayer appealed. Refund requests were untimely under 32 V.S.A. § 5883 (more than 3 years after returns required to be filed) and estimated assessments were not appealed and paid in the absence of a timely filed return.

In re: Town of Killington, Rutland Superior Court Docket No. S0192-99 RcCa (September 3, 2002).
Appeal by town of Valuation Appeal Board decision determining equalized education property value and coefficient of dispersion for 1997. Town challenged State's methodology used for determining value as statistically flawed. Other towns and individuals moved to intervene. Motion to intervene was denied with respect to other towns for failure to exhaust administrative remedies and initially granted but later denied with respect to individuals. Court found that State's methodologies were arbitrary and capricious, faulted State's method due to lack of calculation of confidence intervals, inadequate standards for sample size and stratification, held that State must redetermine Killington's 1997 AFMV using statistically appropriate methodologies. Appealed to Vermont Supreme Court.

Fletcher Allen Health Care, Inc., v. Vermont Department of Taxes, Chittenden Superior Court, Docket No. S0984-01 Cnc (Appeal pending before Superior Court).
Appeal of commissioner's denial of a refund request. Health care services provider contracted with independent contractor to operate its cafeteria food service. Provider was not registered for meals and rooms taxes. Contractor, which maintained a tax account with the Department, collected and remitted tax. Contractor did not request a refund. Provider requested refund on the grounds that (1) meals were not taxable because provided by a non-profit organization in furtherance of its purposes, (2) it was an "operator" entitled to request refund, and (3) there is no express statutory requirement that collected taxes be returned to the party that bore the tax burden (here, customers) for refund purposes. Department maintained that because provider did not register for, collect and remit taxes, or bear the tax burden, it may not receive a refund, and that statutory language requiring that all monies collected be remitted to Department precludes refunds of improperly collected monies. Court held that Provider chose to delegate tax-paying responsibilities and liabilities to Contractor and that it wasn't entitled to a refund of taxes it didn't pay. Court also said that

there was no statutory basis for a refund of otherwise properly collected sales tax.

In re: Town of Killington, Rutland Superior Court Docket No. 49-1-02 Rdcv (August 8, 2002).
Appeal by Town of equalized education property value and coefficients of dispersion for 2001. Town failed to file timely appeal within 30 day limit to Valuation Appeal Board. 32 V.S.A. § 5408(c). VAB denied appeal as out of time; Town appealed, Superior Court granted State's Motion for Summary Judgment. Appealed to Vermont Supreme Court.

Macho v. Vermont Department of Taxes, Orange Superior Court Docket No. 247-11-00 OeCv.
Taxpayer and spouse filed joint estimated payments and later separated. They then filed separate returns. Spouse filed first and was given credit for joint estimated payments (even though spouse didn't claim them). Taxpayer filed several months later, claiming the joint payments. Department denied Taxpayer the credit, on the theory that "the first to file is the first to get." Meanwhile, Taxpayer and spouse divorced; as part of divorce decree the spouse was ordered by the Family Court to pay Taxpayer her share of the credit. The commissioner then held a hearing, and upheld denial of the credit. Taxpayer appealed to the Superior Court, which reversed the commissioner. The Court held the commissioner abused her discretion in not following the "clear instructions" on how to credit the estimated tax payments because a "cursory side-by-side" of the returns constituted sufficient instructions.

Town of Victory v. State of Vermont, et al., Essex Superior Court Docket No. 70-12-00 Excv (8/9/01) (Appeal pending before Vermont Supreme Court).
Town challenged valuation of ANR owned lands for the purposes of PILOT payments. Challenge to 1989 - 1998 valuations rejected on the grounds that appeals were not filed within 21 days required by statute. Town also challenged enrollment of State ANR lands in current use program and claimed they should be removed from program because of State's noncompliance with statutory requirements of filing conformance reports, periodic inspections and audits, and formal reapplication when additional land enrolled. Court rejected challenge because no abuse of discretion.

State of Vermont v. Town of Victory, Ilene Kanoff, Virginia Henderson, Howard Lynaugh, John Holt and Tony Spera, Washington Superior Court Docket No. 598-10-00 WnCv.
Department brought action in nature of mandamus to compel town to remit statewide school property taxes to State. Town challenged 32 V.S.A. § 5402(a)

(statewide school property tax) as unconstitutional under equal protection and common benefits clauses. Department awarded relief; Town ordered to refund excessive property taxes paid; Town ordered to remit school property tax to State; Town's selectboard fined.

Criminal Prosecutions

State of Vermont v. William M. Driscoll, Vermont District Court, Washington County.
William M. Driscoll, owner of Driscoll Communications, Inc., of Stowe, Vermont, entered into a plea agreement and was convicted of 17 tax related criminal charges. Driscoll was convicted of seven counts of failing to file Vermont withholding tax returns during 1995, 1996, 1997 and 1998; seven counts of failing to pay Vermont withholding taxes during 1995, 1996, 1997 and 1998; and three counts of filing false and fraudulent Vermont individual income tax returns for 1996, 1997 and 1998. Judge Edward J. Cashman imposed a deferred sentence on all charges of 30 days to one year, and a fine of $500 on each charge, for total fines of $8,500. Conditions of probation include future compliance with all Vermont personal income tax filing and payment requirements, and restitution of $13,291.92 in outstanding taxes, which includes interest and civil penalties. Driscoll was placed on probation until restitution is paid in full or until further order of the Court.

State of Vermont v. Richard L. Compagna, Vermont District Court, Washington County.
Richard L. Compagna, Jr., of Shelburne, entered a guilty plea on one felony charge that he filed a false claim with the Department of Taxes. The State alleged that Compagna knowingly filed a false Vermont Renter Rebate Claim with Department. The State dismissed three other related counts. Judge M. Patricia Zimmerman, at the Vermont District Court in Barre, imposed a suspended sentence on the felony charge of 30 days to one year. Conditions of probation include payment of a $1,000 fine, appearance before the Reparative Board, future compliance with all Vermont personal income tax filing and payment requirements, and restitution of $15,457.51 in outstanding renter rebates falsely claimed for the years 1993, 1996, 1997 and 1998, which includes interest and civil penalties. Compagna was placed on probation until all fines and restitution are paid in full or until further order of the Court.

State of Vermont v. David M. Feiden, Vermont District Court, Washington County.
David M. Feiden, Latham, NY, entered into a plea agreement and was convicted of three counts of failing to file Vermont withholding tax returns during 1999; and three counts of failing to pay Vermont withholding taxes during 1999. The charges were filed in connection with Mr. Feiden's business, Feiden & Greenberg,

CPA's, of Bennington, VT. Judge Edward J. Cashman imposed a suspended sentence on all charges of 30 days to one year, and a fine of $500 on each charge, for total fines of $3,000. Conditions of probation include participation in the Vermont Reparative Probation Program, future compliance with all Vermont tax filing and payment requirements, and restitution of $14,044.24 in outstanding withholding taxes, which includes interest and civil penalties. Feiden was placed on reparative administrative probation until further order of the Court.

State of Vermont v. Jennifer J. Newsome, Vermont District Court, Windsor Courty.
Jennifer J. Newsome, owner and president of Enchanted Spirits, Inc., which does business as Charaktors, a restaurant and bar in Ludlow, Vermont, was convicted of two charges that she engaged in serving alcoholic beverages during March, 2001, without the meals and rooms tax license required by law. Vermont law requires all persons who operate restaurants and bars in Vermont to obtain a meals and rooms tax license. Agents of the Vermont Department of Taxes had observed Charaktors open for business and selling alcoholic beverages after its meals and rooms tax license had expired. Judge Paul F. Hudson imposed a suspended sentence of 30 days to 60 days and fines totaling $750.00. Conditions of probation include the requirement that Ms. Newsome not operate Charaktors or any other restaurant or place of business within the State of Vermont without first obtaining all valid licenses required by the State of Vermont, Department of Taxes. Newsome was placed on probation until further order of the Court.

2001 FORMAL RULINGS

2001-01
Taxpayer requested a ruling as to whether a trust, the current trustee of which is a Vermont bank, is subject to Vermont income tax. The trust was created by a nonresident Grantor who served as its initial trustee and beneficiary. Upon his death, the terms of the trust directed a subtrust to be created and the remainder of the trust estate became payable to the subtrust. The Grantor's estate is filing an estate tax return in the trust's state of origin. The Grantor's son, who is not domiciled in Vermont, is now the sole beneficiary of the trust and is not entitled to any distribution from the subtrust until the year 2018. The Department ruled that the trust is a nonresident trust as defined by 32 V.S.A. § 5811 (9) and as a nonresident trust, it is liable for Vermont income tax, if any, only on those items of Vermont income listed under 32 V.S.A. § 5823 (b) to the extent they are required to be included in adjusted gross income. The ruling expresses no opinion concerning whether the subtrust is subject to Vermont income tax.

2001-02
Taxpayer, a specialty store doing business in Vermont, requested a ruling on the sales tax consequences when it refunds to a customer less than the full purchase price of a merchandise order which is cancelled or the merchandise returned. Because custom items sold by Taxpayer cannot be returned to its suppliers, the store typically charges a 15% "restocking fee" on the return of cancelled or returned merchandise, crediting the customer with 85% of the original purchase price. Noting that the restocking fee does not represent a charge for any service provided to the customer, the Department ruled that when the credit is issued, the taxable receipt of the original sale is reduced by the amount of the credit. Thus, a credit should also be given for 85% of the tax originally charged, and the credit should be reported on Taxpayer's return.

2001-03
Taxpayer is in the business of motor vehicle financing in Vermont and has developed a deferred like kind exchange (LKE) program under IRC § 1031. Assuming that the exchanges properly qualify for deferred compensation under the IRC, Taxpayer requested a ruling whether Vermont will also defer the recognition of the gain or loss for purposes of corporation income tax imposed by 32 V.S.A. § 5832. The Department ruled that because Vermont income tax is imposed on the Vermont Net Income of a corporation allocated or apportioned to Vermont, 32 V.S.A. § 5832, and Vermont Net Income is defined as the taxpayer's taxable income for that taxable year under the laws of the United States, 32 V.S.A. § 5811(18), if gain or loss is properly deferred under I.R.C. § 1031 it is also deferred in the calculation of Vermont Net Income.

2002 FORMAL RULINGS

2002-01

Taxpayer corporation requested a ruling on its status as an investment and holding company described in 32 V.S.A. § 5837. Taxpayer is one of four affiliated corporations consisting of a parent corporation, a holdings corporation, and two wholly owned subsidiaries of the holdings corporation, one of which is Taxpayer. Taxpayer has agreed to extend credit to its parent corporation in amounts approved for a period not to exceed sixty days, and invests those funds not loaned to the parent company in portfolio investments. The other subsidiary limits its activities to maintaining and managing its intangible investments and the collection and distribution of income from such investments. Its assets consist of intercompany loans to the parent corporation, with any cash not loaned to the parent located in checking and money market accounts with a Vermont bank or invested in short-term obligations through an investment account with a Canadian bank. The parties contemplate a merger of the two subsidiaries. Upon merger, the resulting company will continue the same activities as prior to merger. Activities may be expanded, however, to include holding loans of other affiliates and the acquisition of trademarks, tradenames, and other similar intellectual property from the parent company or its affiliates, which it would license in consideration for the licensees' promise to pay royalties based on sales or other indicia of the licensees' use. The Department ruled that none of the activities of the subsidiaries, as described above, are outside the activities allowed in 32 V.S.A § 5837. When determining whether a corporation's activities are within the scope of § 5837, the Department considers the presence of investment intent, the lack of non-investment activity and whether the investment is effectively a diversion of the operating income of an affiliate. Here, in the context of the entire operation, the intercompany loans qualify as investments.

2002-02

Taxpayers are two corporations which intend to form a partnership and contemplate transferring real estate owned by one of the corporations, the contributed debt on which exceeds the corporation's basis in the property, to the newly formed partnership. Specifically, Taxpayers requested a ruling whether the transfer would be exempt from Vermont's property transfer and land gains taxes. Additionally, Taxpayers requested a ruling whether the holding period of the newly formed partnership would tack onto the holding period of the partner contributing the real property to the partnership for land gains tax purposes, and whether any land gains tax that might be due upon the partnership's subsequent conveyance of the real estate would be determined based upon a holding period that begins from the date of acquisition by the contributing partner. The Department ruled that the contemplated transfer of the property to the partnership would not result in the imposition of a property transfer tax, since both conditions of 32 V.S.A. § 9603 (15) are met. Regarding land gains tax, although the partner transferring the property will receive debt relief income which is treated as a taxable distribution under IRC § 752, that gain is not recognized and no Vermont land gains tax is due unless the partnership elects a step-up in basis. Generally, a partnership's holding period and basis is the same as the holding period and basis of the contributing partner. 32 V.S.A. § 10005(d). Even if the partnership elects a step-up in basis, however, the gain is still calculated based upon a holding period which begins the date the partner transferring the real estate acquired the property. 32 V.S.A. §§ 10001, 10003, 10005 (c).

2002-03

Taxpayer requested a ruling as to whether the sale of certain dental products are subject to sales tax. The products are sold primarily to dentists who use them in their practices or to retailers who resell the products to customers. Taxpayer does not sell directly to customers. The Department ruled the sales to dentists are exempt because the Department assumes that the treatments, when provided by dental professionals, are intended to alleviate or correct a medical condition. 32 V.S.A. § 9741(2); Reg. § 1.9741(2)-1(a). The sales of dental products to retailers, who then resell the products to consumers, are not taxable because sales for resale are specifically excluded from the definition of "retail sale". 32 V.S.A. § 9701(5). The ruling noted, however, that sales of some of the products by either dentists or retailers to consumers are taxable because the products are not used to treat or alleviate human suffering or to correct or reduce the severity of human ailments, injuries or disabilities. Products which are sold at retail, and which are primarily hygienic or preventative in nature, are subject to tax.

2002-04

Taxpayer entered into a purchase and sale agreement to purchase a power-generating facility. Both Taxpayer and seller hold Direct Pay Permits. Prior to closing, seller retained items in its materials and supplies inventory that had been purchased from vendors but had not been withdrawn from storage for assignment to a taxable use (unassigned inventory), and upon which no Vermont sales/use tax had been paid. Taxpayer requested a ruling regarding the taxability of the unassigned inventory when it is transferred to Taxpayer at closing. The Department ruled that Taxpayer should not pay tax on such materials and supplies at closing or at the time of subsequent purchase of the materials. Tax becomes due in the period that any item is removed from unassigned inventory and assigned to a non-exempt use.

2002-05

Taxpayer, a Vermont inn and resort, requested a ruling as to whether sleigh rides offered at its facility and charged separately to its customers are subject to sales tax. The Department held that the fees charged for sleigh rides are amusement charges as defined in 32 V.S.A. § 9701(10) and are therefore subject to sales tax pursuant to 32 V.S.A. § 9771(4). Department regulation § 226-9 further clarifies that amusement charges include fees charged for access to games, rides, and other recreational equipment and activities.

2002-06
Taxpayer, an out-of-state motor vehicle manufacturer, requested a ruling as to whether motor fuel imported into the state in the tanks of motor vehicles transported into Vermont by motor carriers is subject to gasoline or diesel fuel tax. Taxpayer advised that fuel is placed in the tanks of vehicles at the manufacturing facility to "accommodate the loading and unloading of the motor vehicles in transit". The Department ruled that the gasoline used in Vermont is not exempt from the gasoline tax pursuant to 23 V.S.A. § 3106. The Department further ruled that diesel fuel used in Vermont is not exempt from taxation when that fuel is ultimately used on Vermont highways, *see* 23 V.S.A. § 3003(d)(4) (diesel fuel exempt from tax when used by vehicle "off the highways of the state"), including diesel fuel used in the transfer of vehicles from rail to common carrier at dealer locations. If the diesel fuel is used at locations which are not open and accessible to the public or the general circulation of vehicles, it would not be subject to the tax.

2002-07
Taxpayer, operator of various restaurant chains throughout the United States, requested a ruling regarding the applicability of Vermont's meals and rooms tax to bottled water sold to its customers for consumption both on and off restaurant premises. The bottled water comes in sizes ranging from 500 milliliters to 1 liter, and is of several different varieties (e.g. carbonated versus non-carbonated). The Department ruled that bottled water, regardless of the variety sold or the size of the container, qualifies as "food or beverage" under 32 V.S.A. § 9202(12) and is therefore subject to meals and rooms tax when sold by a restaurant, as defined by 32 V.S.A. § 9202(15). The bottled water is taxable whether it is furnished for consumption on or off of restaurant premises. 32 V.S.A. § 9202(10)(A).

TECHNICAL BULLETINS

TB-14 Local Option Tax
Provides general rules and examples relating to the collection of local option sales taxes imposed under the provisions of 24 V.S.A. § 138. The Town of Manchester tax is used for examples, although the principles apply to any other municipalities which enact local option sales taxes. The May 2002 revisions enacts the Town of Williston's Local Option Sales Tax of 1% beginning July 1, 2002. Originally issued: 2/22/99, revised 11/7/00, revised and replaced 5/1/02.

TB-23 Income Tax Withholding
Provides guidance to an employer as to when an employee should complete W-4VT to determine his or her Vermont State income tax withholding. Specifically, employees who take Federal credits which do not pass through to Vermont income tax should complete form W-4VT. Also, employees in civil unions may use W-4VT to show such filing status so that the Vermont tax is computed in the same manner as if the partners were married. As with married employees, partners in a civil union may elect to have withholding taken at the higher Single rate. *See* 32 V.S.A. § 5841. The November 2002 revisions reflect changes made in 2002 Act 140. Originally issued: 11/22/00, revised 6/22/01, revised and replaced 11/25/02.

TB-24 U.S. Government personal income tax exemption
Addresses what types of interest are exempt from the Vermont income tax.

INTEREST RATES

Year	Annual Rate	Monthly Rate
1984	12.0	1.0
1985	13.2	1.1
1986	12.0	1.0
1987	9.6	0.8
1988	9.6	0.8
1989	10.8	0.9
1990	12.0	1.0
1991	12.0	1.0
1992	9.6	0.8
1993	7.2	0.6
1994	6.0	0.5
1995	7.2	0.6
1996	9.6	0.8
1997	9.6	0.8
1998	9.6	0.8
1999	9.6	0.8
2000	8.4	0.7
2001	9.6	0.8
2002	8.4	0.7
2003	6.0	0.5

"When a taxpayer fails to pay a tax liability imposed by this title (except the motor vehicle purchase and use tax) on the date prescribed therefor, the commissioner may assess and the taxpayer shall then pay, a sum of interest computed at the rate per annum established by the commissioner pursuant to section 3108 of this title on the unpaid amount of that tax liability for the period from the prescribed date to the date of full payment of the liability." 32 V.S.A. § 3202(a)